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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3899 OF 2007

M/s.Kothari Auto Parts
Manufacturers Pvt. Ltd. ... Petitioner

V/s.

Mr.K.S. Chhachad ... Respondent

Mr.C.U. Singh with A.K. Jalisatgi for Petitioner
Mr.V.M. Parkar for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 31, 2007**

P.C.:

. The Petition challenges the orders passed by the Industrial Court in Complaint (ULP) No.306 of 2006. The first order that is challenged is an order dated 31.10.2006 whereby the Industrial Court has allowed Miscellaneous Application (ULP) No.13 of 2006 and condoned the delay in filing the complaint. The second order challenged is the order of 31.1.2007 on an application preferred by the company regarding the maintainability of the complaint.

2. The complaint has been filed by the respondent after his services were terminated on account of the superannuation. The respondent has contended in his complaint that the cause of action has arisen on 1.7.2000 when his services were terminated. However, he learnt of his superannuation only in December 2003.

According to the Respondent, the petitioner company has not paid his legal dues which were paid to 110 other workmen who were similarly situated. Therefore, the respondent filed the complaint to claim his legal dues. The Industrial Court has considered the provisions of section 28 of the MRTU & PULP Act. The Industrial Court has found that the respondent had consistently approached the Petitioner and the Deputy Commissioner of Labour for redressal of his grievance and there was no lethargy on his part to claim the amounts due and payable to him. The Industrial Court has thus condoned the delay.

3. In my opinion, cogent reasons have been given by the Industrial Court to condone the delay. The submission of the learned Advocate for the petitioner, that there has been an inordinate delay on the part of the respondent in approaching the Court cannot be accepted. The Industrial Court is empowered to condone the delay in filing the complaint. It has acted within its jurisdiction while condoning the delay and held that the Respondent workman had shown sufficient cause for not approaching the Court in time. In the case of *State of Haryana v/s. Tilak Raj (supra)*, the Supreme Court has observed that the term "sufficient cause" must be construed liberally. A pedantic and technical approach should not be adopted by the Courts, according to the

Supreme Court. Furthermore, a possible view has been taken by the Industrial Court for condoning the delay and, therefore, no interference is called for by this Court under Article 227 of the Constitution of India.

4. The next submission made on behalf of the Petitioner is that the Respondent was no longer a workman and, therefore, the complaint filed by him under the MRTU & PULP Act was not maintainable. Reliance is placed on the judgements in *Workmen of Dimakuchi Tea Estate v/s. Management of Dimakuchi Tea Estate,* **AIR 1958 SC 353** of the Supreme court and *WMI Cranes Limited & Anr. v/s. Kush Sitaram Chavan & Ors.*, **2007 I CLR 1020** of the Bombay High Court.

5. In the case of Workmen of Dimakuchi Tea Estate (supra), the Supreme Court considered the scope of the expression "any person" contained in section 2(k) of the Industrial Disputes Act. Section 2(k) defines Industrial Dispute. The Supreme court observed that the expression "any person" must be read subject to certain crucial limitations. It is observed in para 21 of the judgement thus:

> "(21) To summarise. Having regard to the scheme and objects of the At, and its other provisions, the expression ‘any person’ in S.2(k) of the Act must be read subject to such limitations and qualifications as arise from the context; the

> two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a 'workman' within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest."

6. The learned advocate for the Petitioner also relies on the judgement in the case of *WMI Cranes Limited & Anr. v/s. Kush Sitaram Chavan & Ors., 2007 I CLR 1020*, which according to him has taken a similar view.

7. According to the learned Advocate, these judgments indicate that an employee who is no longer in service cannot file a complaint for payment of wages. However, this submission is contrary to the decisions of this Court in the case of *Philips Employees Union v/s. P.T. Jagtap & Ors.,* **2005 II CLR 182** and in the case of *Carona Limited v/s. Sitaram Atmaram Ghag & Ors.,* **2005 (1) Bom.C.R. 788**. In the case of *Philips Employees Union* (supra), the Division Bench considered a case

where a grievance was made by the employees who were offered voluntary retirement that they were paid less than what was promised to them under the Scheme. An industrial dispute was raised but the Conciliation Officer and the State Government did not take any steps in the matter. The Conciliation Officer refused to act since the employees had already accepted voluntary retirement and the relationship of master and servant between them had been determined. The Division Bench held that the Conciliation Officer was not right in refusing to entertain the dispute on that ground. It was held that the grievance of the Petitioners i.e, the affected employees who had opted for voluntary retirement, had a direct nexus with the 2001 Voluntary Retirement Scheme which they had accepted and which benefits had been extended to them. The Division Bench concluded that for that limited purpose and for remedying the shortfall in payment, the employees could be considered to be "workmen" within the meaning of the Industrial Disputes Act. Thus, although the employees had accepted voluntary retirement, they were able to raise an industrial dispute. The submission of the learned counsel that in view of the provisions of the Industrial Disputes Act r/w the MRTU & PULP Act, a person who is no longer in employment cannot file a claim either under the ID Act or under the MRTU & PULP Act cannot be accepted.

8. In the case of *Carona Limited (supra),* a workman had accepted voluntary retirement under the scheme. He had not been paid in terms of the scheme and, therefore, the learned Single Judge (Rebello, J.) took the view that the employee would continue to be a workman within the meaning of section 2(s) of the Industrial Court Act till the date of final payment under the scheme. A shortfall in payment could therefore be claimed under the MRTU & PULP Act. In *ICI India Ltd. v/s. Presiding Officer & Ors.*, **1993 I CLR 753,** a dispute raised by the union on behalf of pensioners was considered to be an industrial dispute as defined u/s 2(k) of the I.D. Act.

9. A similar situation has arisen in the present case where a workman who was employed from 1.11.1961 till 1.7.2000 had claimed that he has not been paid his dues in accordance with certain settlements. The delay in filing the complaint has been condoned by the Industrial and in my opinion, rightly so. It is obvious that the order condoning the delay, passed on 31.10.2006, has been challenged only because the order dated 31.1.2007 holding that the complaint was maintainable was passed. In fact the petitioner had initially challenged only the order in respect of maintainability of the complaint and not the order condoning the delay in filing the complaint. It was

much later that an amendment was sought and both the orders have been challenged. The workman may have ceased to work from 2000 onwards, however, his claim for his final settlement of dues would survive and he would be able to claim the amount under the labour legislations.

9. In my opinion, the orders of the Industrial Court are not erroneous. There are no infirmities requiring interference in the writ jurisdiction of this Court.

10. Petition rejected.